A

NGU LEH NGIIK & ANOR v. LEE YIU PING & ORS

COURT OF APPEAL, KUCHING
TENGKU MAIMUN TUAN MAT JCA
YAACOB MD SAM JCA
ZABARIAH MOHD YUSOF JCA
B [CIVIL APPEAL NO: Q-02(NCVC)(A)-246-02-2017]
29 NOVEMBER 2018

LAND LAW: *Sub-division – Requirements – Land sub-divided in accordance with parties' shareholdings – Plan for sub-division approved by Land and Survey* C *Department and consented by all parties – Whether sub-division reduced parties' shareholdings – Whether affected right of way to sub-divided land – Whether consent of co-proprietors of land mandatory – Whether High Court Judge had power to make order for sub-division – Land Code (Sarawak) (Cap 81), s. 129(3)*

D ***WORDS & PHRASES:*** *'the same' – Meaning of – Land Code (Sarawak) (Cap 81), s. 129(3) – Whether refers to 'partition of land' – Whether reference to consent of co-proprietors would render second limb of s. 129(3) redundant*

The appellants and the respondents had been using the land, the subject matter of the appeal, for decades. About 23 years ago, the first appellant E constructed a brick wall house cum workshop while the second appellant had constructed an office cum workshop on the land. The first respondent, with the consent of the other respondents, constructed a bungalow on the land. At the material time, neither party objected to the usage of the land or to the location of the building/houses on the land. On or about early 2013, the F second respondent engaged a qualified licensed surveyor, who then prepared a plan for the sub-division of the land into two plots, Plot 1 and Plot 2, in accordance with the appellants' and the respondents' respective shareholdings ('exh. A-1'). Exhibit A-1 was signed by all the co-proprietors and was duly approved by the Land and Survey Department, Sibu for the purpose of agriculture. The sub-division however, could not go through as G the appellants, notwithstanding their earlier consent, objected to it and refused to allow the submission of the sub-division of the land in accordance with the approved plan of sub-division. Hence, the respondents, by way of an originating summons ('OS'), sought an order that the land be partitioned under s. 129 of the Land Code (Sarawak) (Cap 81) ('Land Code'). Before the H High Court Judge ('HCJ'), the appellants tendered their own plan for sub-division and their grounds in opposing the respondents' application were, *inter alia*, that: (i) the partition based on the approved plan reduced their shareholding in the land; (ii) the consent of the appellants as the registered co-proprietors of the land was important and the absence of any such consent I was fatal to the respondents' application; and (iii) the approved plan no longer provided a right of way for the appellants. The HCJ ruled that the

consent of the appellants was not required and that the approved plan for partition was in accordance with the parties' shareholdings. The appellants' plan for partition could not be executed because of the statutory imposition of minimum of one acre for agricultural land and that the appellants' plan contravened this requirement. The only way the partition could be done was for the land to be partitioned into two plots/sub-lot as per the approved plan. Consequently, the OS was allowed. Aggrieved, the appellants appealed. The issues that arose for determination were (i) whether the HCJ erred in holding that consent was not required and not mandatory under s. 129 of the Land Code; and (ii) whether the HCJ had the power to make an order for partition.

Held (dismissing appeal)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) Section 129 of the Land Code gives two options to an applicant to partition a land: (i) by mutual consent under the first limb; and (ii) by order of the court under the second limb. The HCJ had the power to grant the order for partition under the second limb of s. 129(3). Therefore, there was no appealable error on the part of the HCJ in concluding that, from the literal reading of s. 129(3), if the consent of all co-proprietors cannot be obtained, then, any one of the co-proprietors was entitled to apply to the competent court, *ie*, the High Court for an order for partition. The co-proprietor's consent or whether the approved plan represented the wishes of the appellants were no longer relevant as the court was exercising its power to order the partition independent of the consent which power was found not only under s. 129(3) of the Land Code but also under item 3 of the Schedule of the Courts of Judicature Act 1964. (paras 20 & 21)

(2) The words 'the same' in s. 129(3) of the Land Code must be read to refer to the 'partition of land'. To hold that the words 'the same' refer to the consent of co-proprietors would render the second limb of s. 129(3) of the Land Code redundant and otiose as the court could never make an order for partition if co-proprietors did not give their consent. If the co-proprietors had given their consent, the need for any of the co-proprietors to apply to the court for partition would never arise. (para 22)

(3) The appellants' contention that the dispute should be resolved by a writ action, should have been raised during the proceedings at the High Court. However, the appellants did not canvass this point in the High Court and hence, the point was a mere afterthought and devoid of any merit. (para 25)

(4) The respondents' plan was drawn up by a qualified surveyor and it had been approved by the Land and Survey Department, Sibu, while, the appellants' plan for sub-division was never certified by any qualified

surveyor. Neither was the appellants' plan accepted and approved by the Land and Survey Department. The appellant's plan was thus not in compliance with Part X and s. 231(1) of the Land Code. Further, the respondents' plan in exh. A1 was prepared by the surveyor based on the parties' respective shareholding. The appellants' contention that the partition based on plan exh. A1 reduced their shareholding in the land was without merit, more so when the appellants had not adduced credible evidence to support their contention. (paras 26-28)

(5) The point on indefeasibility was also misconceived and was without merit, as the partition, if executed, would not affect the appellants' indefeasible right and interest to the land. Based on exh. A1, there was an existing road connecting both Plot 1 and Plot 2 to the road. Hence, the appellants' complaint that the approved plan would affect their reserved right of way was without merit. (paras 29 & 30)

Bahasa Malaysia *Headnotes*

Perayu-perayu dan responden-responden telah menggunakan tanah, hal perkara rayuan ini, selama bertahun-tahun. Kira-kira 23 tahun dahulu, perayu pertama membina rumah batu dan bengkel manakala perayu kedua membina pejabat serta bengkel di atas tanah tersebut. Responden pertama, dengan persetujuan responden-responden, membina sebuah banglo atas tanah tersebut. Pada masa material, tiada pihak membantah penggunaan tanah atau lokasi bangunan/rumah atas tanah tersebut. Pada atau kira-kira awal 2013, responden kedua melantik pengukur tanah berlesen yang layak, yang kemudiannya menyediakan satu pelan pecah bahagi tanah menjadi dua plot, Plot 1 dan Plot 2, menurut pegangan bahagian perayu-perayu dan responden-responden ('eks. A1'). Ekshibit A1 ditandatangani oleh kesemua pemilik bersama dan diluluskan sewajarnya oleh Jabatan Tanah dan Ukur, Sibu untuk tujuan pertanian. Walau bagaimanapun, pecah bahagi tanah tersebut tidak boleh dilaksanakan kerana perayu-perayu, walaupun telah memberi persetujuan sebelumnya, membantah dan enggan membenarkan pengemukaan pecah bahagi tanah tersebut menurut pelan yang diluluskan untuk pecah bahagi. Oleh itu, responden-responden, melalui saman pemula ('SP'), memohon perintah bahawa tanah dibahagikan bawah s. 129 Kanun Tanah Sarawak ('Kanun Tanah'). Di hadapan Hakim Mahkamah Tinggi ('HMT'), perayu-perayu mengemukakan pelan pecah bahagi mereka sendiri dan alasan-alasan bantahan permohonan responden-responden adalah, antara lain, bahawa: (i) pecah bahagi berdasarkan pelan yang diluluskan mengurangkan pegangan syer mereka dalam tanah; (ii) persetujuan perayu-perayu sebagai pemilik bersama berdaftar tanah tersebut penting dan ketiadaan persetujuan memudaratkan permohonan responden-responden; dan (iii) pelan yang diluluskan tidak memberikan hak memasuki untuk perayu-perayu. Hakim Mahkamah Tinggi memutuskan bahawa persetujuan perayu-

perayu tidak diperlukan dan pelan yang diluluskan untuk pecah bahagi mematuhi pegangan syer pihak-pihak. Pelan perayu-perayu untuk pecah bahagi tidak boleh dilaksanakan kerana pengenaan statutori minimum satu ekar untuk tanah pertanian dan pelan perayu-perayu bercanggah dengan keperluan ini. Satu-satunya cara pecah bahagi boleh dilakukan adalah dengan tanah tersebut dibahagikan kepada dua plot/sub-lot seperti dalam pelan yang diluluskan. Dengan itu, SP dibenarkan. Terkilan, perayu-perayu merayu. Isu-isu yang timbul untuk pertimbangan adalah sama ada HMT terkhilaf apabila memutuskan persetujuan tidak diperlukan dan bukan mandatori bawah s. 129 Kanun Tanah dan sama ada HMT mempunyai kuasa memberi perintah pecah bahagi.

Diputuskan (menolak rayuan)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 129 Kanun Tanah memberi dua pilihan kepada pemohon untuk pemecahan tanah: (i) melalui persetujuan bersama bawah bahagian pertama; dan (ii) melalui perintah mahkamah bawah bahagian kedua. Hakim Mahkamah Tingi mempunyai kuasa memberi perintah pemecahan bawah bahagian kedua s. 129(3). Oleh itu, tiada kekhilafan yang boleh dirayu pada pihak HMT apabila memutuskan bahawa, berdasarkan bacaan harfiah s. 129(3), jika persetujuan kesemua pemilik bersama tidak boleh diperoleh, dengan itu, mana-mana seorang pemilik bersama berhak memohon pada mahkamah berkompeten, iaitu, Mahkamah Tinggi, untuk perintah pemecahan. Persetujuan pemilik bersama atau sama ada pelan yang diluluskan mewakili hasrat perayu-perayu tidak lagi menjadi relevan kerana mahkamah melaksanakan kuasanya untuk memerintahkan pemecahan tanah bebas daripada persetujuan, kuasa yang didapati bukan hanya bawah s. 129(3) Kanun Tanah tetapi juga bawah item 3 Jadual Akta Mahkamah Kehakiman 1964.

(2) Perkataan-perkataan 'the same' dalam s. 129(3) Kanun Tanah mesti dibaca sebagai merujuk pada 'pecah bahagi tanah'. Memutuskan perkataan-perkataan 'the same' merujuk pada persetujuan pemilik bersama akan menjadikan bahagian kedua s. 129(3) Kanun Tanah lewah kerana mahkamah tidak akan boleh memberi perintah pecah bahagi jika pemilik bersama tidak memberi persetujuan. Jika pemilik bersama memberi persetujuan, keperluan untuk mana-mana pemilik bersama memohon kepada mahkamah untuk pecah bahagi tidak akan timbul sama sekali.

(3) Hujahan perayu-perayu bahawa pertikaian sepatutnya diputuskan melalui tindakan writ, sepatutnya dibangkitkan semasa prosiding di Mahkamah Tinggi. Walau bagaimanapun, perayu-perayu tidak menimbulkan isu ini di Mahkamah Tinggi dan dengan itu, perkara tersebut hanya fikiran terkemudian semata-mata dan tanpa merit.

(4) Pelan responden-responden dibuat oleh juruukur bertauliah dan telah diluluskan oleh Jabatan Tanah dan Ukur, Sibu, manakala, pelan perayu-perayu untuk pecah bahagi tidak diluluskan oleh mana-mana juruukur bertauliah. Pelan perayu-perayu juga tidak diterima dan diluluskan oleh Jabatan Tanah dan Ukur. Oleh itu, pelan perayu-perayu tidak mematuhi Bahagian X dan s. 231(1) Kanun Tanah. Selanjutnya, pelan responden-responden dalam eks. A1 disediakan oleh juruukur berdasarkan pegangan syer masing-masing setiap pihak. Hujahan perayu-perayu bahawa pecah bahagi berdasarkan pelan A1 telah mengurangkan pegangan syer mereka dalam tanah tidak bermerit, lebih-lebih lagi apabila perayu-perayu tidak mengemukakan keterangan yang boleh dipercayai untuk menyokong hujahan mereka.

(5) Perkara berkaitan ketidakbolehsangkalan juga disalah tanggap dan tanpa merit, kerana pecah bahagi tersebut, jika dilaksanakan, tidak akan menjejaskan hak ketidakbolehsangkalan dan kepentingan dalam tanah. Berdasarkan eks. A1, terdapat jalan sedia ada yang menghubungkan kedua-dua Plot 1 dan Plot 2 dengan jalan. Oleh itu, aduan perayu-perayu, bahawa pelan yang diluluskan akan menjejaskan hak rizab jalan, tidak bermerit.

Case(s) referred to:

EG v. EG [2012] IEHC 292 ***(refd)***

GP De Silva & Ors v. Chua Yam Thong [1962] 1 LNS 41 HC ***(refd)***

KM S Kumarappan Chettiar v. S Ramasamy KM S Chockalingam [2000] MLJU 464 ***(refd)***

Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors [1991] 3 CLJ 2872; [1991] 3 CLJ (Rep) 73 HC ***(refd)***

Positive Vision Labuan Ltd v. Ketua Pengarah Hasil Dalam Negeri & Other Appeals [2017] 9 CLJ 595 FC ***(refd)***

Tan Kok Chiang v. Tan Yaw Ti & Anor [2009] 1 LNS 711 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, Schedule item 3

Land Code (Sarawak)(Cap 81), ss. 129(1), (3), 132(1), 231(1)

For the appellants - Henry Ling Kuong Meng; M/s Ling & Wong

For the respondents - Clement Wong & Then Siaw Lian; M/s King Wei & Clement Advocs

[Editor's note: For the High Court judgment, please see Lee Yiu Ping & Ors v. Ngu Leh Ngiik & Anor [2017] 1 LNS 2288 (affirmed).]

Reported by S Barathi

JUDGMENT

Tengku Maimun Tuan Mat JCA:

Introduction

[1] This was an appeal by the appellants/defendants against the decision of the High Court in allowing the respondents'/plaintiffs' originating summons ("OS") for an order that the land containing an area of more or less 1.74420 hectares, described as Sibu Occupation Ticket No. 35735 ("the land") be partitioned under s. 129 of the Sarawak Land Code ("the Land Code"). For the reasons that follow, we had unanimously dismissed the appeal.

Background Facts

[2] The appellants and the respondents are the registered co-proprietors of the land, holding the following shareholdings:

(i) The first appellant 57/240 shares

(ii) The second appellant 12/240 shares

(iii) The first respondent 57/240 shares

(iv) The second respondent 38/240 shares

(v) The third respondent 38/240 shares

(vi) The fourth respondent 38/240 shares

[3] The parties are related to one another. The second appellant and the second to the fourth respondents are cousins and the first and the second appellants are mother and son, whereas the first respondent is the uncle to the second appellant.

[4] The appellants and the respondents had been using the land for decades. About 23 years ago, the first appellant constructed a brick wall house cum workshop while the second appellant had constructed an office cum workshop on the land. Similarly, about 20 years ago, the first respondent, with the consent of the other respondents, constructed a bungalow on the land. At all material time, neither party had objected to the usage of the land or to the location of the building/houses on the land.

[5] On or about early 2013, the second respondent engaged a qualified licensed surveyor by the name of Wong Goh Ann to prepare a plan for the sub-division of the land into two plots/lots of land in accordance with the appellants' and the respondents' respective shareholdings.

[6] The surveyor prepared a plan (exh. A1) for the sub-division, whereby the land is divided into plot 1 and plot 2. Plot 1 consists of an area of 4,827.31 sqm while plot 2 consists of 12,611.00 sqm. There is an area of approximately 3.69 sqm reserved for SESCO for the purpose of a tower base

site. In his plan exh. A1, the surveyor labelled the first appellant's and the second appellant's house cum workshop and office cum workshop respectively, as plot 1 whilst the first respondent's bungalow was labelled as plot 2.

[7] The plan exh. A1 also showed all existing roads, reserves and access-ways, the proposed roads, drains and location of drainage outlet and their alignments and dimensions and such other details as may be required by the State Planning Authority.

[8] Exhibit A1 was signed by all the co-proprietors as evident from exh. A3 and it was submitted to the Land and Survey Department, Sibu. The said plan exh. A1 was duly approved by the Land and Survey Department, Sibu on 26 September 2013 for purpose of agriculture (hereinafter exh. A1 will be referred to as the approved plan). The partition or sub-division could not however go through as the appellants, notwithstanding their earlier consent, objected to it and refused to allow the submission of the partition/ sub-division of the land in accordance with the approved plan of sub-division. Hence the respondents' application *vide* the OS.

Proceedings In The High Court

[9] Before the learned judge, the appellants tendered their own plan for sub-division marked as exh. NLN1 and they opposed the respondents' OS on the following grounds:

(i) That the appellants were deceived into signing exh. A3;

(ii) That the partition based on the approved plan reduced their shareholdings in the land;

(iii) That the consent of the appellants as the registered co-proprietors of the land is important and the absence of any such consent is fatal to the respondents' application;

(iv) That the approved plan for sub-division no longer represented the wishes of the appellants since they first gave their consent;

(v) That the approved plan no longer provided a right of way for the appellants, in particular for the second appellant to access his own building on the land from the main road; and

(vi) That the approved plan reclassified and amalgamated both the appellants' several and undivided shares and interest in the land into one collective lot whereas the appellants wanted individual sub-lots for their own respective shareholdings.

[10] The learned judge considered the relevant principles of law relating to the application for sub-division by considering s. 129(1) and (3) of the Land Code. His Lordship found guidance in the cases of *Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors* [1991] 3 CLJ 2872; [1991] 3 CLJ (Rep) 73; [1991] 3 MLJ 439; *Tan Kok Chiang v. Tan Yaw Ti & Anor* [2009] 1 LNS 711;

KM S Kumarappan Chettiar v. S Ramasamy KM S Chockalingam [2000] MLJU 464; *GP De Silva & Ors v. Chua Yam Thong* [1962] 1 LNS 41; [1962] 1 MLJ 236; and the English case of *EG v. EG* [2012] IEHC 292.

[11] Having considered the authorities and the appellants' contentions, the learned judge disagreed with the appellants. In essence, His Lordship ruled that consent of the appellants was not required and that the approved plan for partition was in accordance with the parties' shareholdings. The learned judge further ruled that the appellants' plan for partition could not be executed because of the statutory imposition of minimum of 1 acre for agricultural land and that the appellants' plan contravened this requirement. The learned judge held that the only way partition could be done was for the land to be partitioned into two plots/sublots as per the approved plan.

[12] The OS was consequently allowed by the learned judge and an order in terms thereof was granted. Aggrieved, the appellants appealed to this court.

The Appeal

[13] The appellants argued that in allowing the respondents' application, the learned judge erred in the following respects:

(i) in disregarding the intention of s. 129 of the Land Code;

(ii) in failing to appreciate that the appellants' indefeasible right and interest in the land are undivided, inseverable and absolute; and

(iii) in resolving the conflicting allegations in the affidavits summarily.

[14] Learned counsel for the appellants submitted that the decision of the learned judge in ordering the partition of the land is repugnant to s. 129(1) and (3) of the Land Code; that by s. 129(3), there shall be no partition of the land without the consent of all the co-proprietors and that it was clear from the affidavits that the earlier consent for partition or sub-division was not freely given by the appellants. Learned counsel further submitted that s. 129(3) of the Land Code does not allow the court to exercise its discretionary power to order a partition and that the learned judge had erroneously relied on the cases which were wholly irrelevant to the OS.

[15] Learned counsel had also submitted that by ss. 129(1) and 132(1) of the Land Code, the appellants' undivided rights and interests in the land as the registered co-proprietors, is equally indefeasible against the respondents unless it is otherwise taken away with their free consent.

[16] It was further submitted for the appellants that when they first gave their consent for the partition or sub-division of the land, they gave consent for the partition or sub-division in the manner set out in exh. NLN1 and not in the manner set out in exh. A1. Given the conflicting allegations as contended by the parties, learned counsel submitted that the learned judge ought to have converted the OS into a writ action.

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Our Decision

[17] The primary issue for our determination was whether the learned judge erred in holding that consent is not required and is not mandatory under s. 129 of the Land Code and whether the learned judge had the power to make an order for partition.

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[18] Section 129 of the Land Code provides:

> 129 Co-proprietorship
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> (1) Except in the case of land held by trustees, when land is held by co-proprietors they shall be entitled to the land in undivided shares equally, or in such other proportion as may be registered, and, subject as hereinafter provided, any one of them may claim to have a partition of the land made:
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> C
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> Provided that no partition shall be effected except in accordance with Part X and subject to such terms and conditions as may be imposed by the State Planning Authority.
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> D
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> (2) No such partition of land subject to a charge or sublease shall be made unless the chargee or sublessee, as the case may be, shall in writing delivered to the Registrar have given his consent to such partition.
>
> (3) No such partition of land shall in any case be made unless either the consent of all the co-proprietors has been obtained or the same has been ordered by a competent court.
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[19] Part X of the Land Code laid down the procedure for application for sub-division/partition and s. 231(1) of the Land Code provides that the sub-division plan has to be prepared by a qualified person on behalf of the proprietor.

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[20] Section 129 is very clear in its purport and intent, namely that it gives two options to an applicant to partition a land, ie, first by mutual consent under the first limb and second by order of the court under the second limb. Given the clear wordings of s. 129 of the Land Code, we found no appealable error on the part of the learned judge in concluding that from the literal reading of s. 129(3), if the consent of all co-proprietors cannot be obtained, then any one of the co-proprietors is entitled to apply to the competent court, ie, the High Court for an order for partition.

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[21] We agreed with the learned judge that he had the power to grant the order for partition under the second limb of s. 129(3). Whether or not the co-proprietors gave their consent or whether or not the approved plan represented the wishes of the appellants were no longer relevant as the court was exercising its power to order the partition independent of the consent, which power is found not only under s. 129(3) of the Land Code but under item 3 of the Schedule of the Courts of Judicature Act 1964 which reads:

I

Partition of land

3. Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and consequential directions.

[22] With respect, we were unable to accept the appellants' submission that the phrase 'the same has been ordered by a competent court' in s. 129(3) or to be specific the words 'the same' has to be read in reference to the consent of the co-proprietors for the application for partition of the land. In our judgment, the words 'the same' must be read to refer to the 'partition of land'. To hold that the words 'the same' refer to consent of co-proprietors would render the second limb of s. 129(3) of the Land Code redundant and otiose as the court could never make an order for partition if co-proprietors did not give their consent. And if the co-proprietors had given their consent, then the need for any of the co-proprietors to apply to the court for partition would never arise.

[23] It is trite that Legislature would not act in vain and that when the provisions of law are clear and do not admit of any ambiguity, then the provisions must be strictly interpreted (see *Positive Vision Labuan Ltd v. Ketua Pengarah Hasil Dalam Negeri And Other Appeals* [2017] 9 CLJ 595; [2017] 2 MLJ 421).

[24] We disagreed with learned counsel for the appellants that the learned judge had relied on the cases erroneously. Those cases were useful guidance for the learned judge to come to his decision on the OS. Even if one were to disregard the authorities, we found that the learned judge had correctly decided on the OS based on the clear provision of s. 129(3) of the Land Code.

[25] On the appellants' contention that the learned judge ought to have converted the OS into a writ action, we opined that if indeed the appellants had seriously contended that the dispute should be resolved by a writ action, the proper time to raise this point would be during the proceedings at the High Court. The appellants however did not canvass this point in the High Court. We therefore found this point to be a mere afterthought and devoid of any merit.

[26] In any event, the issue before the learned judge was simply whether in view of the appellants' objection, it was fair and just to order for partition based on the approved plan. It must be borne in mind that the respondents' plan was drawn up by a qualified surveyor and it had been approved by the Land and Survey Department, Sibu while the appellants' plan for sub-division was never certified by any qualified surveyor. Neither was the appellants' plan accepted and approved by the Land and Survey Department. The appellants' plan was thus not in compliance with Part X and s. 231(1) of the Land Code.

A **[27]** Further, the respondents' plan in exh. A1 was prepared by the surveyor based on the parties' respective shareholdings. The appellants' total shareholdings in the land is 69/240 (approximately 28%) whilst the respondents' total shareholdings is 171/240 (approximately 72%). His Lordship found that the computation showed that the partition as per the plan
B in exh. A1 (after excluding the area of 3.69 sqm for SESCO tower base site), is in accordance with the parties shareholdings, ie, that the total area for the appellants is 4,827.31 sqm which is approximately 28% whereas the total area for the respondents is 12,611 sqm which is approximately 72%.

[28] In the premises, we agreed with the learned judge that the appellants'
C contention that the partition based on plan exh. A1 reduces their shareholding in the land was without merit, more so when the appellants had not adduced credible evidence to support their contention.

[29] Insofar as the appellants' argument on the point of indefeasibility is concerned, we were of the view that the point raised was misconceived and
D without merit, as the partition if executed would not affect the appellants' indefeasible right and interest to the land.

[30] The appellants had also complained that the approved plan would affect their reserved right of way. Based on exh. A1, we similarly found this
E complaint to be without merit. Exhibit A1 shows that there is in fact an existing road connecting both plot 1 and plot 2 to the road.

Conclusion

[31] We agreed with the learned judge on the evaluation of the facts and the application of the law. Having found no appealable error on the part of
F the learned judge which warrant our appellate intervention, we unanimously dismissed the appeal.

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